

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2022110557

DECISION

Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, heard this matter by videoconference on March 7, 2023.

Appeals and Governmental Affairs Manager Tami Summerville represented the South Central Los Angeles Regional Center (SCLARC or service agency). Advocate Armida Ochoa represented Mother, who appeared on behalf of Claimant. Ms. Ochoa and Mother received Spanish language interpretation services. Mother and Claimant are not specifically identified to preserve their privacy and maintain confidentiality.

Testimony and documents were received in evidence, the parties made arguments, the record closed, and the matter was submitted for decision at the

conclusion of the hearing. The Administrative Law Judge makes the following Factual Findings, Legal Conclusions, and Order.

ISSUES FOR DETERMINATION

1. Whether SCLARC should fund 175 hours per month of personal assistance services for Claimant.
2. Whether NLACRC should fund 91 hours per month of in-home respite care services for Claimant.

FACTUAL FINDINGS

Jurisdictional Matters

1. On Claimant's behalf, his parents requested SCLARC to fund 175 hours per month of personal assistance services and 91 hours per month of in-home respite care services.
2. By Notice of Proposed Action letters dated September 27, 2022, SCLARC denied both requests citing Welfare and Institution Code sections 4512, subdivision (b), 4646, 4646.4, subdivision (a), 4659, and 4686.5, subdivision (a), as justification for its denial. Welfare and Institution Code section 4686.5 is not applicable to this matter because it was repealed effective January 1, 2018. (Stats. 2017, ch. 65, §1.)
3. On October 19, 2022, Mother filed a Fair Hearing Request appealing SCLARC's denial of the requested services.
4. All jurisdictional requirements are met.

Claimant's Background

5. Claimant is a 13-year-old male consumer of SCLARC due to his qualifying diagnoses of Intellectual Disability-Mild and Autistic Disorder-Moderate. Claimant is also diagnosed with Generalized Anxiety Disorder, Attention Deficit Disorder, and Bipolar Disorder without psychotic features.

6. Claimant's most recent Individual Program Plan (IPP), which is dated August 19, 2022, documents he communicates using complete sentences of four words or more. He requires reminders and prompting to tend to his hygiene, toileting, and grooming. He requires close supervision in all settings. He engages in disruptive behaviors which interfere with his social participation and interaction with others. His challenging behaviors include emotional outburst, physical aggression, self-injury, and elopement.

7. Claimant resides with his parents, who are home based, and his two siblings, both of whom are also SCLARC consumers. Claimant qualifies for special education services in his school district. Since the COVID-19 pandemic, Claimant has been receiving home schooling Mondays through Fridays, 40 hours per week.

Claimant's Personal Assistance Services

8. The service agency's standards, which the SCLARC Board of Trustees approved on May 22, 2018, and the Department of Developmental Services (DDS) approved on January 15, 2019, define personal assistance services for minor children as follows:

Personal assistance services are to assist with bathing,
grooming, dressing, toileting, meal preparation, feeding,

and protective supervision that is a typical parental responsibility for minor children. Personal assistance services for minor children will be considered on an exception basis when the needs of the consumer are of such a nature that it requires more than one person to provide the needed care. There may be exceptional circumstances as a result of the severity and/or intensity of the developmental disability that may impact the family's ability to provide specialized care and supervision while maintaining the child in the family home. Eligibility and/or use of generic services such as In-Home Support Services [IHSS] will be explored and accessed where possible prior to SCLARC funding as an exception.

(Exh. 5.)

9. The service agency's standards additionally provide for "specialized supervision/personal assistance," which is "appropriate 1:1 supervision for pre-school and school aged children with specialized care needs beyond those that can be provided in a typical daycare." (Exh. 7.) According to the service agency's standards, specialized supervision/personal assistance services are "provided to consumers of parents/caregivers/guardians who are unavailable to provide such care and supervision because they are engaged in full time work, school or vocational training and will address health and safety issues. Specialized supervision/personal assistance services can support the consumer and the parent(s)/caregiver(s)/guardian(s) with promoting consumer's independence and integration into their local community."

(Ibid.)

10. As a matter of policy, the service agency's standards recognize childcare as a typical parental responsibility:

For children under the age of 13

Childcare for children under the age of 13 should be considered a "typical parental responsibility." However, a child with a developmental disability may require additional support and supervision while in the home and for community integration. Therefore, the number of specialized supervision hours for consumers under the age of 13 will be based on consumer need and parent(s)/caregiver(s)/guardian(s) will need to provide a schedule reflecting the proposed number of hours requested. . . . Specialized supervision hours may be provided to those who meet the following criteria:

Child has behavioral challenges that constitute a threat to the health and safety of the individual and the safety of others or a threat to property therefore is unable to attend a regular day care.

The parent(s)/caregiver(s)/guardian(s) must be employed or attending school fulltime or the parent is also consumer of the regional center.[1]

The number of hours utilized for specialized supervision hours will be based on need **The determination of the number of hours and any exception to the criteria**

above will be considered on a case by case basis and can be considered based on medical/health needs of the individual or the parent(s)/caregiver(s)/guardian(s) and the utilization of generic resources.

Specialized Supervision/Personal Assistance-OVER the age of 13

For consumers over the age of 13, the hours funded will be based on "need." SC's [Service Coordinators] will gather information needed at the IPP to determine the individual's needs and situations(s), the utilization of generic resources such as IHSS, and the amount of hours requested. [¶ . . . ¶]

The utilization of personal assistance hours is the preferred type of assistance, however the consumer may demonstrate challenging behaviors that constitute the use of specialized supervision hours, the hour type will be determined on a case-by-case basis.

If an individual 13 years and older is able to remain safely in the family home without supervision, they **should not be funded for specialized supervision/PA hours.**

(Exh. 7.)

11. Since at least March 2021, SCLARC previously authorized funding for personal assistance services for Claimant. (See Exhs. H, I, and J.) On August 31, 2022, SCLARC funding for 125 hours per month of personal assistance services for Claimant expired. As reflected on Claimant's *Individual C-19 Personal Assistance/Respite*

Monthly Schedule for August 2022, those expired 125 hours of personal assistance services were used in connection with Claimant's community outings to church, the library, the museum, the aquarium, the zoo, the park, the lake, the beach, the market, the mall, and restaurants, among other places. How SCLARC initially determined 125 hours per month of personal assistance services were necessary to address Claimant's care and supervision needs was neither explained nor clearly established by the evidence presented at hearing.

12. After the August 31, 2022 expiration, Mother submitted a new request for SCLARC to fund 175 hours per month of personal assistance services for Claimant. SCLARC denied the new request but has not yet stop funding the 125 hours per month of personal assistance services for Claimant. Aid is paid pending the conclusion of this appeal.

13. At hearing, Program Manager Alberto Armenta underscored SCLARC's need-based requirement for personal assistance services. He noted the service agency's standards for determining Claimant's need for personal assistance services focus not on Claimant's mental health, as Mother asserted at hearing, but on whether any medical condition disables Claimant's parents from discharging their parental care for and supervision responsibilities.

14. Mr. Armenta explained SCLARC accounted for "the entire composition of the family," meaning a family with three children with developmental disabilities. He further explained SCLARC considered Claimant's parents' medical issues, which were "expressed verbally" to the service agency at a time when no supporting medical records were available for the service agency's consideration. Neither of Claimant's parents presents with a disabling medical condition. SCLARC concluded Claimant's needs rendered him eligible for 75 hours per month of personal assistance services.

Claimant's In-home Respite Care Services

15. In-home respite care services are for alleviating parental stress related to the care and supervision of an individual with a developmental disability. In accordance with its POS [Purchase of Service] Funding Standards, which DDS approved October 18, 2010, SCLARC evaluates a family's request for specified quantities of in-home respite care service hours using established levels of service. SCLARC considers the consumer's age, expected behaviors, and care needs related to that age. In-home respite care services are available at Level A (up to 16 hours per month); Level B (up to 24 hours per month); Level C (up to 30 hours per month); Level D (up to 40 hours per month); and Level E (over 40 hours per month). The POS Funding Standards provide for exceptions on a case-by-case basis. (See Exh. 6.)

16. SCLARC currently funds in-home respite care services for Claimant at Level E. Claimant receives 46 hours of in-home respite care services each month. Level E funding provides for over 40 hours of in-home respite care services "if Level D is met and three or more of the following is (*sic*) present:"

E.1 MEDICAL: Consumer is medically fragile and requires special care on an hourly basis during the day. Requires Nursing Assessment.

E.2 BEHAVIORAL: (No specific criteria identified). Behavioral Assessment Required.

E.3 SELF-CARE: Requires Nursing Assessment (i.e., toileting, assistance with ambulation, hygiene and positioning).

E.4 CAREGIVER CONDITION: (Primary caregiver has life threatening chronic medical condition which severity interferes with ability to care for consumer, e.g., active cancer requiring treatment, AIDS. Consideration must be given to the amount of direct care needed by the consumer and how the caregiver's health problems functionally impair the ability to meet these needs. Nursing Consultation Required.) Requires Service Coordinator Assessment and Interdisciplinary Team meeting.

E.5 FAMILY STRESS FACTORS: Family is seriously considering placement and respite hours are necessary to maintain consumer in family home. The severity and combination of Level C and D criteria may necessitate additional hours. Caregiver or family member requires hospitalization or has a severe medical condition requiring special care in particular month. This should be reviewed monthly with SCLARC Nurse Consultants.

(Exh. 6.)

17. At hearing, Mr. Armenta explained Claimant satisfied only criterion E.2 for Level E in-home respite care service hours. As documented in his IPP, Claimant requires continuous supervision having exhibited disruptive and destructive behaviors. Claimant did not meet criteria E.1; E.3; E.4; or E.5 for Level E in-home respite care service hours. There is no information or evidence of any nursing assessment establishing Claimant is medically fragile or requires assistance with ambulation or toileting or positioning. There is no information or evidence of any nursing

consultation reporting any of Claimant's primary caregiver has a life threatening condition which functionally impairs their ability to care for Claimant. There is no information or evidence Claimant's family is seriously considering the placement of Claimant outside the family home.

18. Mr. Armenta explained SCLARC nonetheless deemed Claimant's parents' challenges and difficulties caring for three children with developmental disabilities an exception warranting Level E in-home respite care service hours. Mr. Armenta further explained SCLARC determined 46 hours per month of in-home respite care services is an appropriate number of hours having accounted for Claimant's school hours and personal assistant service hours. Claimant and his two siblings receive overlapping personal assistant and in-home respite care service hours which in the aggregate amount totals 708 hours per month, thus diminishing the amount of time within which Claimant's parents are reasonably expected to satisfy typical parenting responsibilities.

Mother's Testimony

19. Mother emphasized her various roles as parent, teacher, advocate, and therapist in the family's household. She testified she works "24/7 supporting the needs of three clients of the regional center" and her home "needs extra hands." Mother maintained she needed time to educate herself on various topics related to each of her children's needs. "If I go to work my children needs wouldn't be covered. They would need even more services."

20. Mother identified her health problems as generalized weakness, overweight, stress, and anxiety. She identified Father as a diabetic with high blood pressure and cholesterol and who has anxiety. Mother testified, "I'm trying to avoid wear down, so my children won't be without support."

21. Mother testified personal assistance services are necessary for Claimant "to develop skills for integration in the community." She maintained Claimant would "have regression" and "will get worse" should SCLARC limit its funding to 75 hours per month of personal assistance services. She further maintained SCLARC is "segregating my client. They are leaving him behind."

22. Mother testified Claimant needs 91 hours per month of respite care services to permit her to attend to her health, including going to her medical appointments. She testified, "I would like to have a life; to have some space. I need to learn topics, such as law, based on the needs of each child."

23. Mother noted her relatives have lives of their own which preclude or limit any support they may have to offer her family.

LEGAL CONCLUSIONS

The Applicable Law

1. Under the Lanterman Developmental Disabilities Services Act (Lanterman Act) regional centers, including SCLARC, play a critical role in the coordination and delivery of treatment and habilitation services and supports for persons with disabilities. (Welf. & Inst. Code, § 4620 et seq.) Regional centers, including SCLARC, are responsible for ensuring the provision of treatment and habilitation services and supports to individuals with disabilities and their families are effective meeting stated IPP goals. Regional centers, including SCLARC, are additionally responsible for the cost-effective use of public resources. (Welf. & Inst. Code, §§ 4646, 4646.5, 4647, and 4648.)

2. To those ends, the Lanterman Act specifically obligates regional centers, including SCLARC, to purchase services and supports in conformity with their purchase of service policies approved by the Department. (Welf. & Inst. Code, § 4646.4, subd. (a)(1).) The Department reviews regional centers' guidelines "to ensure compliance with statute and regulation" prior to promulgation of the guidelines. (*Id.* at § 4434, subd. (d).) The guidelines are deserving of deference because they reflect the regional center's expertise and knowledge. (See *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12-15.) Importantly, guidelines regional centers promulgate, including SCLARC, must account for consumers' individual needs when making eligibility determinations for services and supports. (See *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) Regional centers, including SCLARC, must ensure "[u]tilization of generic services and supports when appropriate." (Welf. & Inst. Code, § 4646, subd. (a)(2).)

Standard and Burden of Proof

3. As the party asserting claims for personal assistance and in-home respite care services under the Lanterman Act, Claimant bears the burden of establishing by a preponderance of evidence his entitlement to those services. (*Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 [disability benefit]; *Greatoroex v. Board of Admin.* (1979) 91 Cal. App.3d 54, 57 [retirement benefits]); Evid. Code, §500.)

4. Preponderance of the evidence means evidence that has more convincing force than that opposed to it. (See *Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324.) "[T]he sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant." (*Id.* at 325, original italics.) In meeting the burden of proof by a preponderance of the evidence,

Claimant “must produce substantial evidence, contradicted or un-contradicted, which supports the finding.” (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 339.)

Claimant’s Personal Assistance Services

5. Claimant has met his burden of proof establishing he has care and supervision needs warranting personal assistance services. Claimant’s family includes three children with developmental disabilities. As SCLARC program manager Mr. Armenta acknowledges, “the entire composition of the family” presents exceptional circumstances warranting a grant of personal assistance services. SCLARC applied its approved guidelines to assess Claimant’s care and supervision needs. Its assessment accounted for Claimant’s parents’ medical issues, which do not disable them from discharging responsibilities typical of parenthood to care for Claimant. SCLARC determined 75 hours per month of personal assistance services is an appropriate level of support for Claimant’s circumstances. The preponderance of evidence presented at hearing did not establish otherwise.

6. Cause exists for SCLARC to fund 75 hours per month of personal assistance services for Claimant. (Factual Findings 5 through 14 and 19 through 23 and Legal Conclusions 1 through 5.)

Claimant’s In-home Respite Care Services

7. Claimant presents with significant behavioral challenges. He exhibits self-injurious and aggressive behaviors. He elopes. SCLARC acknowledges these behaviors require constant care and supervision of Claimant. SCLARC additionally acknowledges Claimant is one of three children with developmental disabilities in his family’s household. SCLARC determined in-home respite care service hours are necessary to provide Claimant’s parents with relief from stress caring for and supervising Claimant

as well as to provide them with time to attend to other responsibilities, including caring for their own health and pursuing desirable educational goals. SCLARC further determined 46 hours per month of in-home respite care service hours at its highest authorization level—Level 4—is the appropriate level of support. The preponderance of evidence presented at hearing did not establish otherwise.

8. Cause exists for SCLARC to fund 46 hours per month of in-home respite care services for Claimant. (Factual Findings 5 through 7 and 15 through 23 and Legal Conclusions 1 through 4, 7, and 8.)

ORDER

1. South Central Los Angeles shall fund 75 hours per month of personal assistance services for Claimant unless or until any further assessment or evaluation of Claimant's needs warrants modification of those personal assistance service hours.

2. South Central Los Angeles shall fund 91 hours per month of in-home respite care services for Claimant unless or until any further assessment or evaluation of Claimant's needs warrants modification of those in-home respite care service hours.

DATE:

JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT,

vs.

SOUTH CENTRAL LOS ANGELES REGIONAL CENTER,

Service Agency.

OAH No. 2022110557

**ORDER ON SERVICE AGENCY'S APPLICATION FOR
RECONSIDERATION**

An Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH) issued a final decision in this matter on March 22, 2023.

On April 10, 2023, Service Agency applied to OAH for reconsideration of the decision under Welfare and Institutions Code section 4713 (application). The application was timely submitted. However, the application did not include a proof of service or other evidence that Service Agency gave appropriate notice of the application to Claimant or the Department of Developmental Services (DDS). Therefore, on April 13, 2023, OAH staff requested Service Agency to do so. On April

13, 2023, OAH also advised Claimant's authorized representative of the application and that she could file a response by April 18, 2023.

The undersigned hearing officer was assigned to decide the application, and did not hear the matter or write the decision for which reconsideration is requested.

Pursuant to Welfare and Institutions Code section 4713, subdivision (b), a party may apply for reconsideration to correct a mistake of fact or law or a clerical error in the decision, or to address the decision of the original hearing officer not to recuse themselves following a request pursuant to Welfare and Institutions Code section 4712, subdivision (g).

Here, Service Agency applies for reconsideration on the grounds that the ALJ made an error of fact and law in her decision which must be corrected. Specifically, Service Agency contends "the order doesn't follow the findings listed. More specifically, . . . the findings indicate that 46 hours per month of in-home respite care services is sufficient yet, the order permits funding for 91 hours per month of services."

Claimant's authorized representative did not file a response to the application.

ANALYSIS

There were two issues decided in the decision. The issue relevant to the application was the request by Claimant's authorized representative for Claimant's in-home respite service funding to be increased from 46 hours per month to 91 hours per month.

Factual Findings 15 through 23 of the decision summarized the evidence presented by both parties concerning Claimant's in-home respite service needs and funding.

Legal Conclusions 7 and 8 of the decision made determinations concerning Claimant's in-home respite service needs and funding.

Specifically, Legal Conclusion 7 provided:

Claimant presents with significant behavioral challenges. He exhibits self-injurious and aggressive behaviors. He elopes. SCLARC acknowledges these behaviors require constant care and supervision of Claimant. SCLARC additionally acknowledges Claimant is one of three children with developmental disabilities in his family's household. SCLARC determined in-home respite care service hours are necessary to provide Claimant's parents with relief from stress caring for and supervising Claimant as well as to provide them with time to attend to other responsibilities, including caring for their own health and pursuing desirable educational goals. *SCLARC further determined 46 hours per month of in-home respite care service hours at its highest authorization level—Level 4—is the appropriate level of support. The preponderance of evidence presented at hearing did not establish otherwise.* (Decision, pp. 13-14, emphasis added.)

Legal Conclusion 8 provided, "Cause exists for SCLARC to fund 46 hours per month of in-home respite care services for Claimant. (Factual Findings 5 through 7 and 15 through 23 and Legal Conclusions 1 through 4, 7, and 8.)" (Decision, p. 14.)

It is clear from the only two Legal Conclusions discussing Claimant's in-home respite funding that the ALJ affirmed as appropriate the current funding of 46 hours per month, and that the ALJ rejected Claimant's request to increase that funding to 91 hours per month.

Yet, in Order 2 of the decision, the ALJ wrote, "South Central Los Angeles [Regional Center] shall fund 91 hours per month of in-home respite care services for Claimant unless or until any further assessment or evaluation of Claimant's needs warrants modification of those in-home respite care service hours." (Decision, p. 14.)

It is clear the ALJ made a mistake by writing in her order that Service Agency should fund 91 hours per month of in-home respite. There is no factual finding or legal conclusion which supports Claimant's request for a funding increase, and the ALJ specifically concluded in Legal Conclusion 8 that the appropriate amount of funding is 46 hours per month, not 91 hours per month.

For these reasons, the application must be granted, and the decision will be modified as set forth in the Order below.

ORDER

Service Agency's application for reconsideration of the final decision is GRANTED.

Order number 2 of the decision is modified to read as follows: South Central Los Angeles Regional Center shall fund 46 hours per month of in-home respite care services for Claimant unless or until any further assessment or evaluation of Claimant's needs warrants modification of those in-home respite care service hours.

A copy of this Order with the decision it modifies together are the final decision after reconsideration. The final decision after reconsideration shall be served on each party and a copy shall be provided to DDS.

IT IS SO ORDERED.

DATE:

ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings